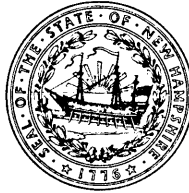


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JUL 25 1988

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July 15, 1988

Ms. Susan Palmer-Terry, Director
Office of Health Services Planning
and Review Board
Division of Public Health Services
Department of Health & Human Services
6 Hazen Drive
Concord, NH 03301

Dear Ms. Palmer-Terry:

RSA 151-C:15, II requires certain applicants for a Certificate of Need (CON) to pay an application fee to the health services planning and review board (board). The same provision provides that an application fee is not required for an application for a CON to expand an existing facility. By memorandum dated June 6, 1988, you have requested our opinion on whether the statutory exception for expansion of existing facilities applies to the owner of new construction or to the building itself. For the reasons set forth below, it is our opinion that the exception applies to the building itself and not to the owner.

In your memorandum you indicated that the applicant, Courville at Nashua ("Courville"), is claiming that the new facility is exempt from the application fee by reason of the fact that it will be one hundred percent owned by a facility included under RSA 151-C:15, I. Courville interprets the CON statute to exclude the assessment of application fees on facilities which are already paying an administrative fee. Courville argues that its corporate ownership of the new facility is within the statutory exception since there is no statutory basis for the board's distinction between facilities applying to build a new facility and facilities applying to build an addition to an existing facility.

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RSA 151-C:15, II provides:

All persons filing an application in response to a request for applications shall pay a fee . . . This paragraph shall not apply to any facility which is included under RSA 151-C:15, I.

(Emphasis supplied). RSA 151-C, I requires licensed acute care hospitals, specialty hospitals and nursing homes to pay an annual administrative fee. Because the exception to the application fee is for facilities already paying an administrative fee, this opinion turns on the construction of the term "facility" in RSA 151-C:15. Based upon the foregoing facts, the question specifically is whether the term "facility" refers only to the building and site for the new construction or rather to the owner of the new construction.

The starting point for interpreting a statute is the language of the statute itself. If the language is plain and unambiguous, there is no need to look beyond the statute to discern the legislative intent. Dover Professional Fire Officers Association v. City of Dover, 124 N.H. 165 (1983). When the legislature has defined a statutory objective, as in RSA 151-C:1, that should be examined as well as the plain meaning of the language. State v. Riley, 126 N.H. 257 (1985). A comprehensive meaning and effect should be given to all provisions of the statute. McCuin v. Secretary of Health and Human Services, 817 F.2d 161 (1st Cir. 1987).

The term "facility" is defined in RSA 151-C:2, XV-a to include, but not be limited to, hospitals, specialty hospitals, and licensed nursing homes, and "include(s) facilities which are publicly or privately owned or for profit or not for profit and which are licensed or required to be licensed in whole or in part by the state." (emphasis supplied). Whenever RSA 151-2 requires an entity, providing diagnosis, treatment, or personal care to persons suffering from any form of illness or handicap, to obtain a license pursuant to RSA 151, that new licensee constitutes a new facility for licensing purposes. Therefore, the term facility cannot be read in this context to refer to the owner since the license will be sought for the building and the services to be provided at the new site.

Although there is no need to look beyond the statute itself, when the definition of a word given in a statute is not sufficient, one may look to the common usage of the word. RSA 21:2. Webster's Third New International Dictionary (1966 ed.) defines facility to mean, among other definitions, "something (as a hospital . . .) that is built, constructed, installed, or

established to perform some particular function or to serve or facilitate some particular end." Based on this definition, there can be no doubt that this term is intended to refer to a newly constructed building which will obtain a license and provide services rather than to the entity which is the owner of a newly constructed building.

The exception to the application fee in RSA 151-C:15, II cannot be interpreted to apply to new facilities which were not previously licensed since the statutory objective states specifically otherwise. The Board is charged with the responsibility of regulating all new institutional health services within the state. The statute allows the board to assess fees for the services it provides either through the assessment of annual administrative fees against all currently licensed facilities or by application fees for entities seeking a CON. In RSA 151-C:15, II the legislature clearly manifested its intention to provide an exception from the application fee for only those previously licensed facilities (already paying an annual administrative fee) which are seeking a CON for expansion of an existing facility. Since annual fees apply to each separate licensee, the exception likewise must apply to each new facility which is to be constructed and separately licensed.

Construing the statute as a whole, it is clear that Courville does not fit within the exception in RSA 151-C:15, II because the term facility must apply to each separately licensed construction. Absent the exception contained in the second sentence of that provision, any person, whether natural or corporate, would be required to pay the fee specified in the statute. Therefore, the legislative intent to exempt those institutions already licensed and paying an administrative fee pursuant to the first section of the statute is limited in scope and does not apply to the situation at hand.

I trust this is responsive to your inquiry. Please do not hesitate to contact me if you require any additional information.

Sincerely,



Martha Pyle Farrell
Attorney

MPF/kab